

AG Contract No.: KR0404-0366TRN
ADOT ECS File No.: JPA 03-121
Project: 95 YU 21/TEA
Section: US 95 @ 20th Street
Between East Main Canal to Ave C
TRACS No. SL412 01C
BUDGET SOURCE ITEM # Local

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
CITY OF YUMA

THIS AGREEMENT is entered into 9th of June, 2004, pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and YUMA CITY, acting by and through its MAYOR and CITY COUNCIL (the "City").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-334 and 28-401 to enter into this agreement and has delegated to the undersigned the authority to execute this agreement on behalf of the State.
2. The City is empowered by Arizona Revised Statutes Section 48-572 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has authorized the undersigned to execute this agreement on behalf of the City.
3. Congress has authorized appropriations for, but not limited to, twelve eligible categories of transportation enhancement activities.
4. Such Project lies within the boundary of and has been selected by the City; the survey of the Project has been completed; and the plans, estimates and specifications have been prepared and as required, submitted to the Federal Highway Administration (FHWA) for its approval.
5. The only interest of the State in the Project is in the acquisition of federal funds for the use and benefit of the City by reason of federal law and regulations under which funds for the Project are authorized to be expended.
6. The City, in order to obtain federal funds for the construction of the Project, is willing to provide City funds to match federal funds in the ratio required or as finally fixed and determined by the City and FHWA.

NO. 26881
Filed with the Secretary of State
Date Filed: 06/09/04

Janice K. Brewer
Secretary of State

By: Vincent D. Guereiro

7. The work embraced in this agreement is to construct a multi-use pathway and bicycle lanes adjacent to 20th Street between East Main Canal to Avenue C, using Federal Aid and City funds hereinafter referred to as the "Project". The estimated costs are as follows:

Construction TRACS No. SL412 01C

* Total Estimated Cost of the Project	\$390,000.00
Federal Aid Funds @ 94.3% of 318,133.62 (cap)	\$300,000.00
Estimated City Funds @ 5.7% of 318,133.62	\$ 18,134.00
City Funds @ 100% (difference between total cost and cap)	<u>\$ 71,866.00</u>
Total Estimated City Funds	\$ 90,000.00

***(Includes; construction engineering and construction administration, and incidentals)**

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

II. SCOPE OF WORK

1. The City will:

a. Prepare design plans, specifications and such other documents and services required for construction bidding and construction. Incorporate or resolve State's review comments.

b. Acquire the necessary right-of-way required for Project construction and hereby certifies that all necessary rights-of-way have been or will be acquired prior to advertisement for bids and shall remove from the proposed right-of-way all obstructions or unauthorized encroachments of whatever nature, either above or below the surface of the Project area and hereby certifies that all obstructions and encroachments have been or will be removed prior to the start of construction.

c. With the consent of the FHWA, use State of Arizona Procurement Procedures: advertise for bids, receive and open bids, enter into contract(s) with a firm(s) to whom the award is made for the construction of the Project. The Project will be performed, completed, inspected, accepted and paid for in accordance with the requirements of the Project Plans, Special Provisions and Standard Specifications.

d. Be responsible for any design consultant and contractor claims for extra compensation due to delays or whatever reason attributable to the City.

e. After the award of the construction contract(s), invoice the State for federal funds progress payments for the direct cost of construction, plus construction engineering and administration, not to exceed the estimated cost of Federal funds of \$300,000.00.

f. Be obligated to incur any expenditures should unforeseen conditions or circumstances increase the cost of said work required by a change in the extent or scope of the work called for in this agreement. Such changes require the prior approval of the State and may be eligible for participation with Federal funds within the \$300,000.00 limit.

g. Upon completion and acceptance by both parties, provide for at its own cost and as an annual item in its budget, perpetual maintenance, landscaping, electrical and water services for the multi-use pathway and bicycle lanes.

h. Complete the Project in accordance with approved plans and specifications and the requirements of the relevant State and Federal statutes, rules or regulations. In the event the City fails to comply with the plans, specifications or any relevant State or Federal statutes, rules or regulations, the City shall hold the State harmless from any claims or costs incurred by the State as a result of the City's failure to comply.

i. Allow free public access to the Project site.

j. Install an ADOT-provided plaque identifying the Project as part of the Transportation Enhancement Program.

k. Permit State employees to perform any inspections of the Project or audit any books or records of the City in order to satisfy the monies on the Project have been spent and the project completed in accordance with the plans and specifications, statutes, rules, and regulations of the federal government.

2. The State will:

a. Agree to be the City's authorized agent for the acquisition of federal funds and submit a program containing the aforementioned Project to FHWA with the recommendation that it be approved for construction and funding.

b. Approve the Project if such Project construction funds are available by FHWA.

c. Enter into a Project agreement with FHWA on behalf of the City covering the work embraced in said construction contract and will request the authorized federal funds available including design, construction engineering and administration costs.

d. After bid opening and award of the construction contract by the City, and upon receipt of and invoice and progress pay request form make progress payments to the City for the direct actual cost of the Project, plus construction, construction engineering and administration costs, within (30) days after receipt and approval of an invoice from the City.

e. Have State employees perform any inspections of the Project on behalf of the City or audit any books or records of the City in order for the State to satisfy itself that the monies on the Project have been spent and the Project completed in accordance with the plans and specification, statutes, rules, and regulations of the Federal government.

III. MISCELLANEOUS PROVISIONS

1. The State assumes no financial obligation or liability under this agreement, or for any resulting construction project. The City, in regard to the City's relationship with the State only, assumes full responsibility for the design, plans, specifications, reports, the engineering in connection therewith and the construction of the improvements contemplated, cost over-runs and construction claims. The City shall require its contractors to name the State and ADOT as an additional insured in the contractor's insurance policies. The City shall also require its contractors to name the State and ADOT as an additional indemnitee in the City's contracts with its contractors. It is understood and agreed that the State's participation is confined solely to securing federal aid; that any damages arising from carrying out, in any respect, the terms of this agreement or any modification thereof, shall be solely the liability of the City and that to the extent permitted by law, the City hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, misrepresentation, directives, instruction or event arising out of the performance or nonperformance of any provisions of this agreement by the State, any of its departments, agencies, officers and employees the City, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, and expenses of litigation and attorneys' fees.

2. The cost of the construction and construction engineering work covered by this agreement is to be borne by FHWA and the City, each in the proportion prescribed or as fixed and determined by FHWA as stipulated in this agreement. Therefore, City agrees to furnish and provide the difference between the total cost of the work provided for in this agreement and the amount of federal aid received.

3. This agreement shall become effective upon filing with the Secretary of State.
4. This agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511
5. The provisions of Arizona Revised Statutes Section 35-214 pertaining to State audit are applicable to this contract. In the event of such an audit, the City will bear all costs associated therewith.
6. This agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona, and incorporated herein by reference regarding "Non-Discrimination".
7. Non-Availability of Funds: Every payment obligation of the State under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.
8. In the event of any controversy, which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.
9. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 S. 17th Avenue - 616E
Phoenix, AZ 85007


City of Yuma
City Administrator
One City Plaza
PO Box 13014
Yuma, AZ 85366-3014

10. Pursuant to Arizona revised Statutes Section 11-952, (D) attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

CITY OF YUMA

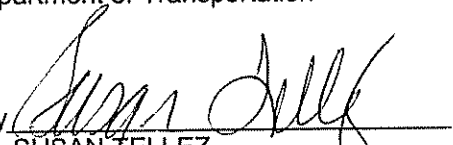
By


ROBERT L. WAGNER
City Administrator

STATE OF ARIZONA

Department of Transportation

By

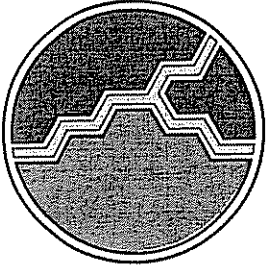

SUSAN TELLEZ
Contract Administrator

ATTEST:

By


BRIGITTA M. KUIPER
City Clerk

G:03-121-Yuma-
20th Street from C Street to E. Main Canal
Revised 23April2004 ly




City of YUMA

**Office of The
City Clerk**

One City Plaza
P O. Box 13012
Yuma, Arizona 85366-3012
928.373.5035
fax: 928 373.5036
TTY: 928 373 5149

CERTIFICATION

I, Edna M. Martin, do hereby certify that I am a duly appointed Deputy City Clerk of the City of Yuma, Arizona, and that the attached is a true and correct copy of Resolution R2004-33, which is on file in the Office of the City Clerk, Yuma City Hall, Yuma, Arizona.


Edna M. Martin 5-11-04
Deputy City Clerk date

RESOLUTION NO. R2004-33

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF YUMA,
ARIZONA, AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT
BETWEEN THE CITY OF YUMA AND THE STATE OF ARIZONA TO
PROVIDE FEDERAL FUNDING FOR 20TH STREET PATHWAY/BIKEWAY
IMPROVEMENTS**

WHEREAS, the City of Yuma (City) is desirous of constructing the 20th Street Pathway/Bikeway, from the East Main Canal to Avenue C; and,

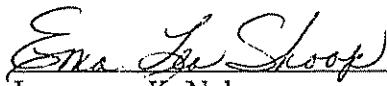
WHEREAS, the State of Arizona (State) has agreed to provide federal funding for the project through a transportation enhancement grant; and

WHEREAS, the State and the City wish to enter into an Intergovernmental Agreement (IGA) allocating federal funds to the City, to complete the 20th Street Pathway/Bikeway project, in accordance with the approved plans and specifications.


NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Yuma, Arizona, that the City Administrator is authorized and directed to execute an Intergovernmental Agreement with the State of Arizona, as shown in Exhibit A, attached hereto and by this reference made a part hereof, to provide federal funding for the 20th Street Pathway/Bikeway project.

Passed and adopted this 5th day of May, 2004.

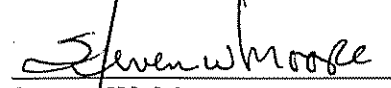
APPROVED:


Lawrence K. Nelson
Mayor *Deputy*

ATTESTED:


Brigitta M. Kuiper
City Clerk

APPROVED AS TO FORM:


Steven W. Moore
City Attorney

APPROVAL ATTORNEY FORM FOR THE
CITY OF YUMA

I have reviewed the above referenced intergovernmental agreement between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the CITY OF YUMA, an agreement among public agencies which, has been reviewed pursuant to A.R.S. section 11-951 through 11-954 and declare this agreement to be in proper form and within the powers and authority granted to the CITY under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this agreement

DATED this 6 day of May, 2004.

Ronald H. Hines (For)
City Attorney



OFFICE OF THE ATTORNEY GENERAL
STATE OF ARIZONA

TERRY GODDARD
ATTORNEY GENERAL

CIVIL DIVISION
TRANSPORTATION SECTION
WRITER'S DIRECT LINE: 602.542.8855

INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR04-0366TRN (**JPA 03-121**), an Agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

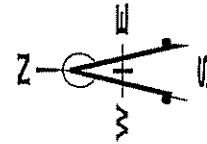
DATED: June 1, 2004

TERRY GODDARD
Attorney General

A handwritten signature in cursive script, reading "Susan Davis", written over a horizontal line.

SUSAN E. DAVIS
Assistant Attorney General
Transportation Section

Reference Only



N.T.S

LOCATION OF SUBJECT PROPERTY



Prepared by: JESUS GARCIA

Checked by: KEVIN EATHERLY

DEPT.
OF
PUBLIC
WORKS



Date: 3-29-2004
SCALE: N.T.S.
Revised:

CIP No.
5.9516
5.9615